THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD B. HOLLAND

Appeal No. 96-4043
Application 08/235,538[1]

ON BRIEF

Before CALVERT, ABRAMS, and McQUADE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

[1] Application for patent filed April 29, 1994. According to the appellant, the application is a continuation-in-part of Application 08/058,329, filed May 10, 1993, now abandoned.

DECISION ON APPEAL

This appeal is from the decision of the examiner to reject claims 12 through 14.[2] Claims 15 through 23, the only other claims pending in the application, stand allowed.

The invention relates to "containers for light-sensitive strip or sheet materials" (specification, page 1). Claim 12 is illustrative of the subject matter on appeal and reads as follows:

12. A container for enclosing a strip or sheet of light sensitive material of the type including an elongated opening from said container for withdrawing said light-sensitive material, said opening having a pair of opposed inner faces; and a strip of light-locking material attached to each of said inner faces, characterized by: said light-locking material being a woven, napped and sheared fabric having staple yarn weft floats with said staple yarn fibers raised therefrom to form a pile to prevent light from entering said container and exposing said light-sensitive material.

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[2] The record in this application indicates (1) that none of claims 12 through 14 has been twice rejected and (2) that the decision of the examiner appealed from (Paper No. 8) was not expressly designated as a final rejection or action. These circumstances raise the issue of whether the instant appeal is premature (see 35 U.S.C. § 134 and 37 CFR § 1.191(a)). It is apparent from the Notice of Appeal (Paper No. 9) and main brief (Paper No. 10) that the appellant considers the decision appealed from to be a final rejection or action. It would also appear from the statement in the answer (Paper No. 11) that "[n]o amendment after final has been filed" (page 1) that the examiner also considers the decision appealed from to be a final rejection or action. In this light, we regard the decision appealed from to be a final rejection or action, with the examiner's failure to expressly designate it as such being the result of an inadvertent oversight.

The references relied upon by the examiner as evidence of obviousness are:

Okamoto et al. (Okamoto)	3,865,678	Feb. 11, 1975
Tate et al. (Tate)	5,158,118	Oct. 27, 1992
Mizuno	5,219,128	Jun. 15, 1993 (filed Jun. 11, 1992)

The appealed claims stand rejected under 35 U.S.C. § 103 as follows:

a) claim 12 as being unpatentable over Mizuno in view of Okamoto; and

b) claims 13 and 14 as being unpatentable over Mizuno in view of Okamoto, and further in view of Tate.

Reference is made to the appellant's main brief (Paper No. 10) and to the examiner's decision appealed from (Paper No. 8) and answer (Paper No. 11) for the respective positions of the appellant and the examiner with regard to the propriety of these rejections.[3]

Mizuno discloses a photographic film cassette having an elongated film-passage mouth 6. The mouth has a pair of opposed inner surfaces carrying light-trapping members 7 and 8. These

[3] The examiner has refused entry of the reply brief (Paper No. 12) filed by the appellant in response to the answer (see Paper No. 13). Accordingly, we have not considered the arguments advanced in the reply brief in reviewing the merits of the appealed rejections.

light-trapping members "consist of sheets with fluffs as facing layers and flexible or compressible materials as base layers" (column 3, lines 53 through 55). Mizuno teaches that "a material for the sheets can be selected from among woven and knitted fabrics of synthetic fiber such as nylon, polyester and acrylic, regenerated fiber such as rayon, cupro and natural fiber such as cotton, silk and sheep wool; non-woven fabrics; synthetic leathers; fluffy materials; flocked material and films" (column 3, lines 56 through 62). In Example 5,

> [a] polyester thread of 70 denier/20 filaments was used to form a ribbon of a twill fabric in accordance with a weave illustrated in FIG. 6 in which one warp thread overlies two weft threads and underlies one weft thread alternately. . . . The ribbon was then treated for raising by a cylindrical sand grinder to form short loops 0.2 mm long, as fluffs, and cut at a predetermined size to obtain the sheets [column 8, lines 6 through 22].

It is not disputed that the Mizuno cassette meets all of the limitations in appealed claim 12 except for those relating to the specifically defined light-locking material.

Okamoto discloses "a raised woven fabric whose surface is covered with extra-fine fibers having a suede-like touch, appearance and feel" (column 1, lines 5 through 7). Figure 2 illustrates a cross-sectional schematic view of a raised woven fabric

> wherein (4) is a warp consisting of crimped fibers, (5) is a weft consisting of a bondle [sic, bundle] of fine fibers, and (6), (7) and (8) are raised fibers. When a woven fabric having an appropriate number of floating wefts is subjected to raising processing, raised fibers (6) in the form of downy hairs consisting mainly of fine fibers of the weft (5) or raised fibers (7) in the form of small loops are formed, the weft (5) is mutually restricted with the warp (4), the weft does not float in the form of a large loop and a uniform suede-like woven fabric having a good cover of raised fibers is obtained [column 7, lines 42 through 53].

Okamoto also teaches that the woven fabric may be made of polyester fibers (see columns 6 and 7) and that the fabric may be sheared after the raising processing to obtain an excellent nap (see column 15, lines 11 through 18).

In explaining the rejection of claim 12, the examiner contends that

> [i]t would have been obvious to one of ordinary skill in the art to provide the film cassette of Mizuno with the material of Okamoto for use as a light trap. No unusual or unobvious result is attained by substituting one old and well known type of woven, napped and sheared material for another to provide a similar function. Also, the use of a spun, staple length yarn for the weft or warp in the fabric of Mizuno as modified by Okamoto would have been obvious to one of ordinary skill in the art since such types of yarn are old and well known for their durability and the examiner takes official notice of same [Paper No. 8, page 3].

The appellant, on the other hand, argues that "[t]here is no teaching nor is it obvious to substitute the fabric of Okamoto for that of Mizuno. Neither Mizuno or Okamoto recognize[s] that

the claimed light-fabric would provide excellent light-lock characteristics. Furthermore, the Okamoto fabric is not napped and sheared as required by the claims" (main brief, page 3).

Given the combined teachings of Mizuno and Okamoto, the appellant's argument is not persuasive.

As indicated above, Mizuno teaches that the light-trapping components of the photographic film cassette disclosed therein may be made of any number of different materials including raised woven polyester fabrics. Okamoto discloses a raised and sheared woven polyester fabric of the type defined in claim 12 and teaches that such has uniform suede-like properties and a good cover of raised fibers. One of ordinary skill in the art would have readily appreciated the Okamoto fabric, with its uniform properties and good cover of raised fibers, to be one of the many suitable materials contemplated by Mizuno for use as a light-trapping component. Given this appreciation, the artisan would have found it obvious to so utilize the Okamoto fabric in the Mizuno cassette. The appellant has not challenged the examiner's official notice that staple yarns are old and well known for their durability, or the examiner's additional conclusion that the use of such yarns in the fabric of Mizuno as proposed to be

modified in view of Okamoto would have been obvious to one of ordinary skill in the art.

Moreover, the above noted teachings of Mizuno and Okamoto regarding the use of polyester belie the appellant's argument (see page 3 in the main brief) that the references would not have suggested "warp yarns of substantially 100% polyester" as recited in claim 14.

For these reasons, the differences between the subject matter recited in claims 12 and 14 and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. Therefore, we shall sustain the standing 35 U.S.C. § 103 rejection of these claims.

We shall also sustain the standing 35 U.S.C. § 103 rejection of claim 13, which depends from claim 12, since the appellant has not argued such with any reasonable specificity, thereby allowing this claim to stand or fall with its parent claim (see In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987)).

In summary, the decision of the examiner to reject claims 12 through 14 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

IAN A. CALVERT Administrative Patent Judge	)	
NEAL E. ABRAMS Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JOHN P. McQUADE Administrative Patent Judge	)	

Terry T. Moyer
P.O. Box 1927
Spartanburg, SC 29304

JPM/jrg

APPEAL NO. 96-4043 - JUDGE McQUADE
APPLICATION NO. 08/235,538

APJ McQUADE

APJ CALVERT

APJ ABRAMS

DECISION: **AFFIRMED**

Typed By: Jenine Gillis

DRAFT TYPED: 17 Feb 99

FINAL TYPED: